

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 740.

ALBERT & J. M. ANDERSON MANUFACTURING COMPANY,
APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED DECEMBER 18, 1922.

(29,290)

(29,290)

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Court of Claims.

No. 34332.

ALBERT & J. M. ANDERSON MANUFACTURING COMPANY, a
Corporation,

vs.

THE UNITED STATES.

I. Petition and Amendment Thereto.

On December 23, 1919, the plaintiff filed its original petition. On October 11, 1920, by leave of court, the plaintiff filed an amendment to the petition, so that the same now reads as follows:

Petition.

The petition of the Albert & J. M. Anderson Manufacturing Company respectfully represents:

1. Petitioner is a corporation created under the laws of the State of Maine, with its principal place of business and manufacturing plant in the City of Boston, Massachusetts, and prior to the making of the contract hereinafter mentioned, was engaged in the business of manufacturing electric railway, and light and power, specialties, and also in the manufacture of ordnance for the United States Army and the manufacture of brass cartridge cases for the United States Navy and for the British Government.

2. On the 23d day of July, 1917, petitioner entered into a contract (No. 31192) with S. McGowan, Paymaster General of the Navy, for the manufacture and delivery of 250,000 brass cartridge cases, at the price of \$5.55 per case, the whole aggregating the sum of \$1,387,500; the cases to be manufactured from materials furnished by the United States. A copy of the said contract is hereto annexed.

3. Petitioner thereafter entered upon the performance of the contract and up to and upon December 19, 1918, was manufacturing and delivering the cases required under the contract. On that day the Navy Department, presumably because of the cessation of hostilities between the United States and the German Empire, ordered petitioner to discontinue certain of the work then in progress under the contract, and notified it that the Bureau desired to cancel 50,000 of the cases. Subsequently the Navy Department cancelled the contract, so far as the further manufacture and delivery thereunder was concerned, except only that thereafter, up to and including the month of March, 1919, it received cases which, since December 19, 1918, had been completed to bring the number up to two hundred

thousand, and also received sixty-six cases in addition thereto. There have thus been manufactured and delivered to the United States under said contract 200,066 of the cases required. And there has been no further manufacture or delivery of cases under said contract. So that petitioner, by such action on the part of the United States, was prevented from manufacturing and delivering the remaining 49,934 cases called for by the contract.

3 4. The actual cost of the manufacture of the cases by the petitioner was the sum of \$3.625 per case, including in this sum a fair estimate of the expense which would be incurred by the petitioner in providing new tools from time to time, and the maintenance of the equipment installed. Consequently, petitioner's net income on each case would have been the sum of \$1.925, being the difference between the contract price and the actual cost of manufacture, which cost per case would have been the same had petitioner been allowed to complete its contract. So that, by reason of the unauthorized cancellation, pro tanto, of the contract by defendant, petitioner has incurred a loss of \$96,102.97, being the amount which petitioner would have realized as net income over actual cost, and thus applicable to reimburse it for expenditures or equipment theretofore purchased and manufactured to enable it to perform the work called for by the contract, and for interest on the investment. This sum the petitioner would have received had it been permitted to manufacture and deliver the remaining 49,934 cases at the contract price; and it is rightfully and justly entitled to recover from the defendant, as damages for the unauthorized cancellation of said contract, the said sum of \$96,102.97.

5. Petitioner, having declined to acquiesce in such cancellation, was requested by the Navy Department to furnish a statement of what would be a fair adjustment of its loss in the premises. Thereupon, after minute and careful inquiry into all the details of the cost of manufacture, petitioner reported its loss to be the sum of \$1.76 per case, the whole aggregating the sum of \$87,883.84. That report the Department refused to accept, and thereafter offered 4 petitioner the sum of \$17,629.12 in satisfaction of its claim which offer petitioner declined.

6. Petitioner is the sole owner of the claim herein presented. No assignment of any part thereof, or interest therein, has been made to any one.

7. Petitioner and its officers have at all times borne true allegiance to the Government of the United States, and have not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government.

8. Petitioner is justly entitled to recover the amount herein claimed, \$96,102.97, after allowing all just claims, credits and offsets and prays judgment in that amount.

ALBERT & J. M. ANDERSON MANUFACTURING COMPANY,
By JOHAN M. ANDERSON,
President.

CHAPMAN W. MAUPIN,
Of Washington, D. C.;
RUSSELL, MOORE & RUSSELL,
Of Boston, Mass.,
Attorneys for Petitioner.

STATE OF MASSACHUSETTS,
County of Suffolk, ss:

Johan M. Anderson makes oath and says that he is the President of petitioner, Albert & J. M. Anderson Manufacturing Company; that he has read the foregoing petition by him subscribed and knows the contents thereof, and that he verily believes the statements therein contained to be true.

JOHAN M. ANDERSON.

5 Subscribed and sworn to before me, the undersigned, a notary public in and for the county and State aforesaid, this sixteenth day of December, 1919.

PAUL M. FOSS,
Notary Public.

My commission expires October 19, 1923.

Contract No. 31192.

Opening, 3rd July, 1917.

This Contract, of two parts, made and concluded this 23rd day of July, 1917, A. D., by and between Albert & J. M. Anderson Mfg. Co., 289-293 A Street, of Boston, in the State of Mass., party of the first part, and the United States, by the Paymaster General United States Navy (Chief of the Bureau of Supplies and Accounts), acting under the direction of the Secretary of the Navy, party of the second part, Witnesseth, That, for and in consideration of the payments hereinafter specified, the party of the first part, for itself and its personal and legal representatives, doth hereby covenant and agree to and with the party of the second part, as follows, viz:

1. That it, the said party of the first part, will furnish and deliver, at its own risk and expense, the following classes of articles, at the place and within the time stated for each class, and at the price set opposite each item as appended hereto, respectively:

Contract 31192.

General Specifications and Conditions.

Cartridge cases to be manufactured in accordance with "Specifications O. D. 150," and in accordance with the following drawings:

4-inch 50-cartridge case, 15875.

3-inch 50-cartridge case, 16426.

1-pounder cartridge case, 13095.

The above drawings and specifications may be obtained upon application to the Commandant, Navy Yard, Washington, D. C.

6 Bids.—Under Bid B the Government will furnish Grade 1 copper in the form required by the contractor, in accordance with "Specification 46C5a," issued by the Navy Department Feb. 1, 1917, at the following rates:

For each 4-inch cartridge case, 12.075 pounds.

For each 3-inch cartridge case, 5.563125 pounds.

For each 1-pounder cartridge case, 0.3105 pound.

Under Bid C the Government will furnish Grade 1 copper as specified under Bid B, and will also furnish A zinc in accordance with "Specifications 47Z1c." issued by the Navy Department, Feb. 1, 1915, at the following rates:

For each 4-inch cartridge case, 5.425 pounds.

For each 3-inch cartridge case, 2.499375 pounds.

For each 1-pounder cartridge case, 0.1395 pounds.

NOTE.—The total quantity of metal that will be supplied by the Government under Bid B is 13,273,875 pounds of copper, and under Bid C the same quantity of copper and 5,963,625 pounds of zinc.

It will be noted that the metal to be furnished by the Government under Bids B and C represents the quantity of metal in the finished case as per the Washington Navy Yard shop practice (slightly greater than the drawings), and that the contractor must assume all losses in the brass mill, and must utilize the scrap.

As it may be impracticable for the Government to furnish exactly the quantities of copper and zinc specified, any necessary adjustments will be made by allowance to the contractor or a reduction to the Government of the difference involved at the rate of 30 cents per pound for the copper and 11½ cents per pound for the zinc.

Bidders must submit the information called for on the blank lines below:

Form of Copper Required.—Two notch Ingots.

Name of Factory to Which Copper and Zinc are to be Delivered.—American Brass Co.

7 Address.—Ansonia, Conn., or Buffalo, N. Y.

Date Delivery of Copper and Zinc will be Required.—August 1, 1917.

It is understood and agreed that the Government may, at its option, require delivery to be made at such navy yard or yards as may be designated when the material is ready for shipment. As the destination

tion can not be specified now, arrangements will be made to prepare a supplementary contract covering the additional cost of transportation from the bidder's establishment to the destination desired by the Government. In case the material can be shipped on a Government bill of lading at a lower freight rate than can be secured by the contractor, the inspector of ordnance in charge of the inspection will arrange for shipment under Government bill of lading.

NOTE FOR NAVAL INSPECTOR.—As soon as destination is known, advise Bureau of Supplies and Accounts, in order that supplementary contract can be prepared.

Inspection to be made at place of manufacture unless otherwise directed by the Bureau of Ordnance.

When the bidder and the manufacturer are the same, the exact address of the manufacturing establishment should be given and not the office address.

All handling of material necessary for purposes of inspection shall be performed and all test specimens necessary for the determination of the qualities of materials used shall be prepared and tested at the expense of the contractor.

If inspection is authorized at the place of manufacture, shipment made without authority from the Government inspector may result in return, at contractor's expense, of material to place of manufacture for inspection.

If contract is sublet, the contractor and subcontractor shall furnish the inspector representing the bureau concerned in their district quadruplicate copies of all orders placed with manufacturer for materials, stating, when possible, the purpose of each item ordered and the specifications for the same. In all cases these orders shall contain the number of the original contract of which these constitute sub-orders.

In connection with the inspection of the material, if incorrect information is given, thereby causing one or more useless trips by the inspector, the Government reserves the right to charge the expense of such useless trips to the contractor, and further inspection at the mills may be denied the contractor, at the option of the Government.

Bid A.—

Name of manufacturer: Albert & J. M. Anderson Mfg. Co.

Address: 289-293 A Street, Boston, Mass.

Class 182.—(Bu. Req'n 144, Ord.-App'n: "Ammunition for Auxiliaries and Merchantment."—Sch. 1285.)

To be delivered f. o. b. cars or on wharf at or near contractor's works as follows: Deliveries to commence about 120 days after date of contract or receipt of copper and zinc from the Government, and to be completed within 450 days thereafter.

Deliveries to commence not later than January 1, 1918, and continue at the rate of at least 1,000 cases per working day until contract is complete.

Other terms of delivery will receive consideration.

Bids are requested as follows:

Bid A.—On the basis of the contractor furnishing all copper and zinc required.

Bid B.—On the basis of the Government furnishing Grade 1 copper at the rate specified elsewhere, the contractor to furnish the zinc.

Bid C.—On the basis of the Government furnishing Grade 1 copper and Grade A zinc at the rates specified elsewhere.

9 The price quoted under Bids B and C is to be a toll charge or differential. Note that the Government furnishes the copper and zinc as specified.

Stock Classification No. 4.

Item 1. 250,000 cartridge cases for 4-inch 50-caliber guns, each \$5.55, total, \$1,387,500.00.

For Bid C.

2. It is hereby mutually and expressly covenanted and agreed by and between the parties hereto that the article or articles to be furnished or services to be performed under this contract shall conform in all respects to the requirements of the specifications hereunto annexed, which specifications, the "Instructions, Deliveries, and Conditions," printed on the proposal of the said party of the first part, shall be deemed and taken as forming a part of this contract with like operation and effect, as if the same were incorporated herein; and in any case where the specifications do not explicitly provide to the contrary, all workmanship and materials entering into the manufacture or construction of any article or articles under this contract, shall be of the very best commercial quality and manufacture; and said article, articles, or services shall upon delivery or completion, be subject to inspection and examination by the officer or officers authorized by the said party of the second part to inspect and examine the same; and no article furnished or services performed under this contract shall be accepted until it or they shall have been inspected and approved by such officer or officers; and any of said articles not so approved shall be removed by the said party of the first part at his own expense, and within ten days after notification.

3. It is further covenanted and agreed, as aforesaid, that time is an essential element of this contract, and that, if the said party of the first part shall fail to make delivery of any or all of the articles or materials or to perform any or all of the services herein contracted for, in conformity with the conditions and requirements of the contract, and within the time or times prescribed, the said party of the second part will be damaged thereby; and the amount of said damages is hereby fixed and agreed to in advance, as liquidated damages, and not as penalty, and the said party of the second part shall make deductions from the contract price accordingly, as follows, viz.:

10 For each day's delay, Sundays and holidays excepted, until satisfactory delivery or performance shall have been made, or until such time as the party of the second part may procure the same as herein-

after provided, at the rate of one-twentieth of 1 per cent of the contract price, the deductions, however, not to exceed in any case 10 per cent of the stipulated value of the articles or materials not so delivered, or of the services not so performed; rejection of deliveries or performance not to be considered as waiving deductions: Provided, That no liquidated damages shall be deducted for such period after the expiration of the time or times prescribed for delivery or performance, as, in the judgment of the party of the second part, shall equal the time that, either in the beginning or in the prosecution of the deliveries or services contracted for, shall have been lost on account of any cause for which the United States is responsible, or on account of strikes, riots, fire, or other disaster, delays in transit or delivery on the part of transportation companies, or any other circumstances beyond the control of the contractor, but such circumstances shall not be deemed to include delays on the part of subcontractors in furnishing materials when such delays arise from causes other than those herein specified: And provided further, that the question whether delays are due to causes herein specified shall be determined by said party of the second part.

4. It is further covenanted and agreed that if the said
11 party of the first part shall fail in any respect to perform the contract the same may, at the option of the United States, be declared null and void, without prejudice to the right of the United States to recover for defaults therein or violations thereof, or the said party of the second part may purchase or procure in such manner and from such person or persons as he deems proper, paying such price therefor as may be necessary in order to procure the same, such of said articles or materials of the kind specified as near as practicable, or procure the performance of such services, as the said party of the first part shall fail to deliver or perform as required, and may demand and recover from the said party of the first part the difference between the price so paid therefor and the price stipulated in the contract; and the amount of such difference shall be paid by the said party of the first part to the said party of the second part on demand.

5. It is further covenanted and agreed that the said party of the first part shall indemnify the United States, and all persons acting under them, for all liability on account of any patent rights granted by the United States that may be affected by the adoption or use of the articles herein contracted for.

6. It is further covenanted and agreed that in carrying out the provisions of the contract no person shall be employed who is undergoing sentence of imprisonment at hard labor which has been imposed by a court of the United States, or of any State, Territory, or municipality having criminal jurisdiction; that the contract is upon the express condition that no Member of or Delegate to Congress, nor any person belonging to or employed in the naval service is, or shall be, admitted to any share or part therein or to any benefit to arise therefrom except as a member of a corporation; and that any

transfer of the contract, or of any interest herein, to any person or party by the said party of the first part shall annul the same, so far as the United States is concerned.

12 7. And this contract further witnesseth, That the United States, party of the second part, in consideration of the foregoing stipulation, do hereby covenant and agree, to and with the party of the first part, as follows, viz:

That upon the presentation of the customary bills, and the proper evidence of the delivery, inspection, and acceptance of the said article, articles, or services, and within ten days after such evidence shall have been filed in the Bureau of Supplies and Accounts, there shall be paid to the said Albert & J. M. Anderson Mfg. Co., or to its order, by the Navy Pay Officer, at Washington, D. C. (Disbursing Office), the sum of One million three hundred eighty-seven thousand five hundred (\$1,387,500.00) dollars, or the sum found due under this contract: Provided, however, That no payments shall be made on any one of said classes until all the articles or services embraced in such class shall have been delivered or performed and accepted, except at the option of the party of the second part.

In witness whereof the said parties hereto have hereunto set their hands and seals the day and year first above written.

ALBERT & J. M. ANDERSON MFG. CO.
J. M. ANDERSON,

Pres.

[L. S.]

S. McGOWAN,

*Paymaster General U. S. Navy, Chief of
the Bureau of Supplies and Accounts.* [L. S.]

Signed and sealed in the presence of

GEO. F. VEDELER,

As to Party of the First Part.

E. W. SMITH,

As to Paymaster General U. S. Navy.

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II. *History of Proceedings.*

On February 24, 1920, a general traverse was filed under Rule 34.

On December 14, 1920, on motion made therefor by the defendant (and consented to by the plaintiff) the general traverse was withdrawn and a demurrer to the petition was filed.

On February 1, 1921, the demurrer was argued and submitted.

On February 21, 1921, the Court filed an order overruling, without prejudice, the defendant's demurrer.

III. *Argument and Submission of Case.*

On November 6, 1922, this case was argued and submitted on merits by Messrs. Arthur W. Russell and Chapman W. Maupin, for the plaintiff, and by Mr. Alexander H. McCormick, for the defendant.

14 IV. *Findings of Fact and Conclusion of Law.*

Entered November 13, 1922.

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following

Findings of Fact.

I.

Plaintiff, the Albert & J. M. Anderson Manufacturing Company, is a corporation duly created and existing under the laws of the State of Maine.

II.

At the outbreak of the recent war in Europe, plaintiff was a general machinist and manufacturer of electrical appliances, with main office and plant in the city of Boston, Massachusetts. Prior to the making of the contract now in suit plaintiff manufactured for the British Government 200,000 four and a half inch howitzer brass shell cases and for the United States 24,000 three-inch "15-pounder" brass shell cases.

III.

And also prior to the making of the contract now in suit, to wit, on May 7, 1917, plaintiff entered into contract with the Navy, No. 29855, for the manufacture of 65,000 four-inch, 50-caliber, brass shell cases at the price of \$7.65 per case, the Government furnishing the copper and plaintiff the spelter for the cases. Plaintiff increased its shop equipment of hydraulic presses, pumps, and tools for the performance of this contract, which contract was duly completed before deliveries began under the contract now in suit, and payment for the 65,000 cases has been made to plaintiff in full.

IV.

The contract now in suit, No. 31192, for the manufacture of 250,000 four-inch, 50-caliber, brass shell cases, "Class 182.—(Bu. 15 Req'n 144, Ord.—App'n: 'Ammunition for Auxiliaries and Merchantmen.'—Sch. 1285)" at the price of \$5.55 per case, was awarded to plaintiff as the lowest bidder after due advertisement, according to law, and was entered into on the 23d day of July, 1917, between plaintiff and the United States through S. McGowan, Paymaster General of the Navy, the Government to furnish all the materials for the manufacture of the cases, which were precisely the same in size and kind as those provided for in contract No. 29855, above mentioned. A copy of the said contract is annexed to the petition herein and by reference is made a part of this finding.

V.

In order to be able to deliver the shell cases as speedily as required by contract No. 31192 plaintiff was obliged to and did enlarge its plant by the purchase of adjoining property and by the installation of additional hydraulic presses, pumps, and accumulator.

VI.

Plaintiff duly entered upon the performance of contract No. 31192 and up to and on December 19, 1918, was manufacturing and delivering the cases required. On that day plaintiff received the following telegram from the Navy Department:

"Bureau desires to cancel fifty thousand four-inch cartridge cases, and directs company immediately to stop casting and rolling brass not required.

"RALPH EARLE,
"Chief of Bureau, Ordnance, Navy."

And shortly thereafter plaintiff received the following letter from the department:

Navy Department,

Bureau of Ordnance.

Washington, D. C., Dec. 21, 1918.

Subject: Contract 31192, 250,000 4"/50 cartridge cases—Reduction in quantity.

Reference: (a) Bu. Ord. telegram of December 19, 1918.

SIRS:

In reference (a) the bureau informed the company that it desired to cancel 50,000 4"/50 cartridge cases of those to be delivered under the above-mentioned contract, and directed the company immediately to stop casting and rolling such brass over that required.

The bureau wishes to be advised if a reduction in the contract quantity, as indicated above, will be agreeable to the company without further adjustment. If such reduction is not agreeable, it is requested that the company forward, as soon as practicable, for the consideration of the bureau, a statement of what the company believes to be a fair adjustment.

If more brass than that necessary to complete the reduced number is in process, the bureau desires to be informed immediately as to the amount thereof.

Very truly yours,

C. C. BLOCH,
Captain, U. S. N., Acting Chief of Bureau.

16 Plaintiff by letter of January 7, 1919, declined to accept the proposed cancellation of the contract unless it should be paid the difference between the cost of production of the residue of the 250,000 shell cases and the contract price of such residue.

VII.

After receipt of said letter and telegram ordering discontinuance of work plaintiff, having a considerable amount of material in process, was told by defendant to continue work until it had 200,000 cases finished. When plaintiff stopped work there were a few cases finished in excess of the 200,000. Of these defendant took 66, so that the total number of cases manufactured and delivered was 200,066, all of which were paid for in full by defendant without deductions on any account. And plaintiff, in consequence of said order of the Navy Department, was prevented from manufacturing and delivering the remaining 49,934 cases called for by the contract.

VIII.

Pursuant to request made by the Navy Department by letter of February 4, 1919, plaintiff on February 28, 1919, submitted an estimate of the cost of production of the cases at the time the work was stopped. Nearly six months after submission of this estimate plaintiff received the following letter from the Navy Department:

Navy Department,

Bureau of Supplies and Accounts,

Washington, D. C., 15 August, 1919.

Subject: Contract 31192, relative to partial cancellation.

Albert & J. M. Anderson Mfg. Co.,
289-923 A Street, Boston, Mass.

Sirs:

After a careful consideration of your claim for damages, based on the partial cancellation of the contract mentioned, it has been decided to make you the following offer:

The Navy will pay you \$17,629.12, which sum represents that part of amortization of special facilities on the canceled portion of the contract, as follows:

Class of equipment.	Cost.	Residual value.	Net amortization.
Machines and equipment purchased..	\$48,100.93	\$10,161.11	\$37,939.82
Machines and equipment manufactured	21,821.34	5,727.04	16,094.30
Buildings and building alterations...	113,159.72	55,705.00	57,454.72
	183,081.99	71,593.15	111,488.84
Tool material.....	55,806.11	1,604.00	54,202.11
All labor and overhead.....	100,112.49	.....	100,112.49
Estimated tools to complete.....	14,365.46	.....	14,365.46
Total	362,366.05	.....	289,108.96
Less excess provided for on contract 29855 .....	.....	.....	87,336.06
Amount to be prorated on basis of deliveries.....	.....	.....	201,832.30
49934/315000 of \$201,832.30.....	.....	.....	31,904.30
Less tools to complete.....	.....	.....	14,365.46
Total amortization chargeable to canceled portion contract 31192 .....	.....	.....	17,629.12

17 You may either reimburse the Navy for excess quantities of metals received on contract 31192 and contract 29855 at the market prices prevailing at the time of settlement or deliver to the Navy the actual quantity of such excess material in kind. It is believed that a settlement on this basis will be fair and just to all concerned.

Please advise whether you prefer to reimburse the Navy for excess metals or if you would rather return said excess material in kind.

Respectfully,

W. N. HUGHES,
By Direction of the Paymaster General.

IX.

Plaintiff rejected said offer to pay it \$17,629.12, and never at any time agreed to accept said sum in satisfaction of its claims, and no part thereof was paid. Plaintiff did agree to take the excess material and pay for it or turn it over to the Government. It has since been turned over to and sold by the Navy Department.

X.

At the time of the armistice, November 11, 1918, plaintiff was ready, able, and willing to deliver the cases at the rate of 2,000 per day, provided there was no interference by "priority orders" from defendant with the delivery of brass discs to plaintiff by its subcontractor, the American Brass Company, of Ansonia, Conn. Plaintiff was then working with two shifts, 22 hours per day in every

twenty-four, but was ordered by defendant to reduce its working hours to eight hours per day, which it did. Working a single shift at eight hours per day, plaintiff manufactured and delivered the cases at a rate averaging between 800 and 900 per day, and at that rate would have completed the contract within less than 60 working days from the time it stopped work on the cases in March, 1919.

XI.

The actual cost of production of the cases by plaintiff during the last three months of its work under the contract was the sum of \$3,6254 per case, and plaintiff would have completed the remaining 49,934 cases at that rate per case if the work had not been stopped by defendant. The cost of completing said remaining cases at that rate would have aggregated the sum of \$181,030.73. The contract price of the cases was \$5.55 per case, a total of \$277,133.70. The difference between that sum and the cost of production is \$96,102.97, and plaintiff would have realized that amount as net income from the 49,934 cases if it had been permitted to manufacture and deliver the same.

XII.

The amount expended by plaintiff for special facilities for the performance of Navy contracts Nos. 29855 and 31192 was the sum of \$349,081.75 less the sum of \$73,197.15, the residual value, leaving the sum of \$275,884.60 as the amount to be amortized, of which the sum of \$43,727.71 was chargeable to the canceled portion of contract No. 31192.

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XIII.

If plaintiff had been permitted to complete the contract, its net income from the 49,934 cases would have been 53 per cent of the cost of production, and its average net income from the entire 250,000 cases would have been slightly over 20 per cent of the cost of production. The difference between the percentage of net income from the two parts of the work would be due (1) to the fact that none of the heavy expenses for special facilities is included in the estimate of the cost of the remaining 49,934 cases, and (2) to the fact that production greatly increased, and the percentage of defective cases greatly decreased, as the work progressed and the operatives grew more and more proficient in their respective tasks.

Conclusion of Law.

On the facts found the court concludes as matter of law that the plaintiff is entitled to recover of and from the defendant the sum of forty-three thousand seven hundred and twenty-seven dollars and seventy-one cents (\$43,727.71), and judgment is directed accordingly.

V. Judgment of the Court.

At a Court of Claims held in the City of Washington on the Thirteenth day of November, A. D., 1922, judgment was ordered to be entered as follows:

The Court, upon due consideration of the premises find in favor of the plaintiff, and do order, adjudge and decree that the plaintiff as aforesaid, is entitled to recover and shall have and recover of and from the United States the sum of Forty-three thousand, seven hundred and twenty-seven dollars and seventy-one cents (\$43,727.71).

By THE COURT.

VI. Plaintiff's Application for and Allowance of an Appeal.

Comes now the claimant, by its attorney, and prays the allowance of an appeal from the judgment entered on the findings of fact herein, November 13, 1922.

CHAPMAN W. MAUPIN,
Attorney for Claimant.

Filed December 4, 1922.

Ordered: That the above appeal be allowed as prayed for.
December 11, 1922.

By THE COURT.

Court of Claims.

No. 34332.

ALBERT & J. M. ANDERSON MANUFACTURING COMPANY,
a Corporation,

vs.

THE UNITED STATES.

I, F. C. Kleinschmidt, Assistant Clerk Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the argument and submission of case; of the findings of fact and conclusion of law entered by the Court; of the judgment of the Court; of the plaintiff's application for and the allowance of an appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at Washington City this Thirteenth day of December, A. D., 1922.

[Seal of the Court of Claims.]

F. C. KLEINSCHMIDT,
Assistant Clerk Court of Claims.

Endorsed on cover: File No. 29,290. Court of Claims. Term No. 740. Albert & J. M. Anderson Manufacturing Company, appellant vs. The United States. Filed December 18th, 1922. File No. 29,290.